

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re Case Nos. 01-55472-JRG and
01-55473-JRG
CONDOR SYSTEMS, INC., a Chapter 11
California corporation; and CEI
SYSTEMS, INC., a Delaware Jointly Administered for
corporation, Administrative Purposes Only
Debtors.

**ORDER ON PRICEWATERHOUSECOOPERS LLP'S
THIRD THROUGH FINAL FEE APPLICATIONS**

I. INTRODUCTION

By notice filed February 19, 2004, PricewaterhouseCoopers (PwC) sought final approval of \$1,239,356.77 in fees and \$18,241.64 in expenses for the period from November 8, 2001 through December 12, 2003. However, by an order filed on October 22, 2003, the court awarded PwC fees of \$521,437.65 and reimbursement of expenses in the amount of \$6,882.10 on a final basis. These fees approved on a final basis were from December 7, 2001 through May 31, 2002, the period covered by the first and second fee applications. For that reason, the court will only consider PwC's final application as applicable to the period after May 31, 2002 through December 12, 2003, which is reflected in the third fee application through the final fee application.

1 On March 23, 2004, the court ordered the audit of PwC's fees for the
2 third through final fee applications. This resulted in the audit of total
3 fees of \$548,399.50 and total expenses of \$8,673.67.¹ For the reasons
4 herein stated, PwC's request for fees is denied in part and granted in
5 part.

6 **II. FEES**

7 Section 330 of the Bankruptcy Code provides that the court may award
8 to a professional person employed under §§ 327 or 1103 reasonable
9 compensation for actual, necessary services rendered and reimbursement of
10 actual, necessary expenses. In determining the amount of reasonable
11 compensation, the court considers the nature, the extent, and the value
12 of the of such services, taking into account all relevant factors. 11
13 U.S.C. § 330(a)(3). With this in mind, the court reviewed the audit
14 report. Having reviewed the audit report submitted to the court on
15 September 16, 2004, there are several items that need to be address

16 **A. Intra-office conferences and meetings and conferences attended 17 by more than one professional require a general reduction in 18 fees.**

19 The amount of intra-office conferences and attendance at conferences
20 and meetings by multiple professionals has been an ongoing issue in this
21 case. As indicated in the audit report, fees that fall within these

22 ¹ The court has been unable to reconcile the \$1,257,498.90 in total fees and expenses
23 that PwC noticed for hearing. The total amount audited was \$557,073.17. Assuming the noticed
24 amount included the fees and expenses previously approved on a final basis in first and second
25 fee applications, \$528,319.75, then the total fees and expenses would be \$1,085,392.92. If the
26 court then adds in the amounts that PwC claims it is still owed on prior fee applications,
27 \$85,304.48, this would result in \$1,170,697.40 in fees and expenses. However, there is still
28 another \$86,801.50 in fees and expenses that are unaccounted for.

The court notes that the audit was ordered to cover the third fee application through
the period included in the final fee application. When the court reviewed the amounts
previously approved on an interim basis, plus holdbacks and agreed to reductions, and the fees
and expenses sought for the final application period, the total amount of fees and expenses
matches the amount audited. Thus, the court will consider the amount audited as the total fees
and expenses before the court for approval on a final basis.

1 categories still appear to be excessive. [See Exhibits D and E.]² Intra-
2 office conferences comprise approximately \$110,142.80 of the fees sought
3 and of that amount approximately \$97,426.50 involve multiple professionals
4 billing for the same intra-office conference. [See Exhibit D.] Multiple
5 attendance at conferences and meetings comprise \$75,105.60 of the fees
6 sought, excluding the entries that appear on Exhibit D. [See Exhibit E.]
7 Combined, this accounts for a little more than 31% of the fees and

8 The Bankruptcy Court for the Northern District of California
9 maintains Guidelines for Compensation of Professionals.³ Guidelines 15
10 and 16 provide:

11 15. **Conferences** - Professionals should be prepared to explain time
12 spent in conferences with other professionals or
13 paraprofessionals in the same firm. Failure to justify this
time may result in disallowance of all fees related to such
conferences.

14 16. **Multiple Professionals** - Professionals should be prepared to
15 explain the need for more than one professional or para-
16 professional from the same firm at the same court hearing,
deposition or meeting. Failure to justify this time may result
in compensation for only the person with the lowest billing
rate.

17 Consistent with the court's guidelines, the general rule is that no
18 more than one professional may charge the estate for intra-office
19 conferences and meetings absent an adequate explanation. In re Bennett
20 Funding Group, Inc., 213 B.R. 234, 245 (Bankr. N.D.N.Y. 1997); In re
21 A.A.D.C., Inc., 193 B.R. 448, 450-51 (Bankr. N.D. Ohio 1996); In re
22 Poseidon Pools of America, Inc., 180 B.R. 718, 731 (Bankr. E.D.N.Y. 1995).
23 This is equally applicable to outside meetings and conferences attended
24

25 ² All references to exhibits are to the exhibits that appear in the "Review and Analysis
26 of Final Fee Application Submitted by PricewaterhouseCoopers LLP," which was filed with the
27 court on September 16, 2004.

28 ³ The District's Guidelines for Compensation and Expense Reimbursement of Professionals
and Trustees are available on the District's Web Site at <http://www.canb.uscourts.gov>.

1 by more than one professional.

2 PwC's explanation for the intra-office conferences and attendance
3 at meetings by more than one professional is a generic response that these
4 activities were related to each professional's engagement and was more
5 efficient in the long run.

6 The court questions this explanation when most of the intra-office
7 conferences were at least one hour in length. In addition, PwC offers no
8 indication that when more than one professional was present at these
9 conferences and meetings it was because the professional held a particular
10 expertise that did not result in a duplication of effort. For example,
11 the court has found in some circumstances that conferences and meetings
12 would involve two professionals who bill at more than \$500 per hour. [See,
13 e.g. Exhibit D: page 5, entries of 9/24/02; Exhibit E: page 5, entries of
14 3/27/03.] The court assumes that a professional billing at more than \$500
15 per hour has a high level of expertise such that the professional would
16 need little assistance.

17 The court has reviewed the number of intra-office conferences and
18 multi-attended meetings and takes the approach of disallowing the fees of
19 the professional in these conferences with the highest hourly rate. In
20 situations where more than two professionals were present, the court still
21 considered only the one professional at the highest hourly rate. The
22 amount of fees related to intra-office conferences was \$46,427.00 and the
23 amount of fees related to meetings attended by more than one professional
24 was \$37,470.30, which totals \$83,897.30.

25 However, in a complex case no single professional is going to possess
26 all of the skills to accomplish the necessary tasks. The estate is better
27 served where multiple professionals with the required expertise are
28

1 utilized. In these circumstances, some communication is required.
2 Because the court recognizes that some amount of intra-office conferencing
3 and multi-attended meetings will occur, the court will reduce these fees
4 by 50%. Taking 50% of \$83,897.30, the court disallows fees in the amount
5 of \$41,948.65.

6 **B. Billing increments at .50 and 1.0 hour increments are so**
7 **extensive that a general reduction is warranted.**

8 The audit report also points out the number of entries in which PwC
9 billed in increments of .50 or 1.0 hour. [See Exhibit A.] The UST states
10 that it had brought this issue to PwC's attention in May 2003, and had
11 been told by PwC that in the future it would bill in .10 hour increments.
12 The UST seeks an adjustment to account for this. PwC responds that its
13 internal policy requires employees to report their time in .10 of an hour
14 increments.

15 The court's Guideline 12 requires that professionals keep time
16 records in minimum increments of .10 hour and professionals who utilize
17 a minimum billing increments greater than .10 hour are subject to a
18 reduction of their request. Given the UST's statement that this issue was
19 brought to PwC's attention and the number of entries in increments of .50
20 and 1.0 hours, the court reduces total fees by \$5,000.00 to account for
21 this situation.

22 **C. Compensation for services that are not adequately described is**
23 **disallowed.**

24 The audit report highlights a number of entries that contain vague
25 descriptions of the work involved. [See Exhibit B.] The court has
26 reviewed the entries and denies fees for the following entries: Exhibit
27 B-1, Ingras 9/10/03 and 9/11/03; Exhibit B-2, Abraham 2/18/03 and 2/20/03;
28 Exhibit B-2, Elek 11/19/02 and 11/20/02; and Exhibit B-2, Hall 11/4/03.

1 This results in a fee reduction of \$3,543.20. The report also describes
2 clumped entries. [See Exhibit C.] PwC states that multiple tasks that
3 were significantly interrelated were treated as one task. The court finds
4 this explanation to be reasonable.

5 **D. Nonworking travel billed at full time is denied in part.**

6 Nonworking travel is categorized in the audit report. [See Exhibit
7 F.] The court's order of December 18, 2001, provides that "[t]ravel time
8 for Professionals where work on these cases is not otherwise being
9 performed during such travel time may be charged at 50% of the hourly rate
10 of the Professional, for no more than six (6) hours per day." The court
11 has reviewed the nonworking travel time and located an entry in which the
12 professional billed at full time instead of 50% of the hourly rate. [See
13 Exhibit F: Momsen 1/9/03.] Thus, fees are reduced by \$183.50.

14 **E. Time entries reflecting administrative/clerical activities are
15 not compensable by the estate.**

16 The audit report points out entries that appear to be related to
17 administrative/clerical activities. [See Exhibit G.] Clerical services are
18 overhead expenses and are not compensable under § 330(a) of the Bankruptcy
19 Code. Sousa v. Miguel (In re United States Trustee), 32 F.3d 1370, 1374
20 (9th Cir. 1994). Services such as filing, assembling or compiling
21 documents, organizing files, calendaring dates, making copies, faxing or
22 transmitting, moving records, to name a few, are inherently clerical.

23 Having reviewed the entries in Exhibit G, the court finds the entries
24 to be clerical and administrative in nature and thus denies \$4,143.50 in
25 fees.

26 **F. Miscellaneous aspects of PwC's final fee application.**

27 In PwC's final fee application, it states that it is still owed
28 \$48,006.20 on account of fees in the second fee application covering the

1 period of March 1, 2002 through May 31, 2002. As discussed from the
2 outset, the court had approved the fees in the second fee application on
3 a final basis and in doing so disallowed \$57,702.50 in fees. Thus, the
4 court denies PwC's request for \$48,006.20 because it is related to the
5 second fee application period.

6 PwC also seeks \$37,298.28 in fees that the court denied at the
7 hearing on the sixth fee application. However, this amount was included
8 in the total amount audited and thus, there is no further reason to
9 address this request.

10 The court also notes that the \$548,399.50 in fees audited include
11 fees in the amount of \$1,975.50 that PwC had agreed to waive as part of
12 the third fee application.⁴ This reduction is reflected in the February
13 3, 2003 fee order. Thus, the court further reduces PwC's fee request by
14 \$1,975.50.

15 Finally, PwC failed to submit to the auditor the data in electronic
16 form as required by the court's order dated March 23, 2004. The result was
17 an increase in the amount charged by the auditor from a cap of 1% of the
18 total fees audited to a cap of 1.25% of the fees audited. This resulted
19 in an increase in the audit fee of \$1,392.68. PwC's fees will be reduced
20 in this amount as it is not reasonable for the estate to bear the burden
21 of this cost.

22 Thus, the court denies \$58,187.03 in fees requested for the period
23 from the third fee application through the final fee application.

24 _____
25 ⁴ The \$548,399.50 audited is comprised of: \$39,641.00 approved on an interim basis on
26 the third fee application, plus the \$1,975.50 reduction previously agreed to as part of the
27 fees requested on the third fee application; plus \$119,180.80 approved on an interim basis on
28 the fourth fee application, plus \$103,387.80 approved on the fifth fee application, plus
\$111,894.82 approved on an interim basis on the sixth fee application, plus \$37,298.28 denied
as a holdback on an interim basis on the sixth fee application, plus \$135,021.30 PwC now seeks
for the seventh and final fee application period.

1 **III. EXPENSE ITEMS THAT ARE DISALLOWED.**

2 **A. Postage.**

3 As for expenses, several issues have arisen as a result of the audit.
4 PwC requests a total reimbursement of \$4,200.00 for postage on two entries
5 dated August 31, 2002, and November 30, 2002, each for \$2,100.00. [See
6 Findings, page 15.] No additional information is given to support these
7 expenses and the court is unable to evaluate whether these charges are
8 reasonable. In its response to the audit, PwC offers no explanation for
9 these charges. Thus, reimbursement for these expenses is denied.

10 **B. Mileage.**

11 Under the Guidelines, travel of one hour or less round-trip is not
12 reimbursable. The audit report points out several trips in which
13 reimbursement for mileage is sought. [See Exhibit N.] Given the distance
14 traveled, the court assumes the trips billed were at least one hour.
15 However, the court is concerned that the mileage sought reflects at least
16 two and at times four professionals separately billing for mileage on the
17 same date to go to the same location. [See Exhibit N.] The court does not
18 find this to be an efficient use of time and resources and reduces this
19 expense by \$89.81.

20 **C. Travel Expenses.**

21 The court also denies reimbursement for an airline cancellation fee
22 in the amount of \$247.50. [See Findings, page 16.] In addition, the court
23 denies a \$215.00 round-trip taxi expense because during the same trip,
24 \$61.78 is sought for a car rental. [See Findings, page 6; Exhibit

25 Finally, the expenses that are related to attendances at meetings by
26
27
28

1 more than one professional amount to \$3,813.19. [See Exhibit O.]⁵ Having
2 concluded a 50% reduction for fees related to meetings attended by more
3 than one professional is warranted, the court likewise finds a 50%
4 reduction in expenses to be warranted. Thus, the court denies \$1,906.59
5 in travel-related expenses.

6 The court denies \$6,658.90 in expenses for the period from the third
7 fee application through the final fee application.

8 **IV. CONCLUSION**

9 The court approves on a final basis fees in the amount of
10 \$490,212.47, having denied fees in the amount of \$58,187.03, for the
11 period from the third fee application through the final fee application.
12 Reimbursement for expenses is approved in the amount of \$2,014.77, the
13 court having denied \$6,658.90 in expenses for the period from the third
14 fee application through the final fee application.⁶ All fees and expenses
15 that are denied are done so on a final basis. Any fees and expenses PwC
16 has received in excess of those approved herein are to be returned to the
17 reorganized debtor. DATED: _____

18
19
20 JAMES R. GRUBE
UNITED STATES BANKRUPTCY JUDGE

21
22
23
24
25 _____
26 ⁵ The court has excluded those entries related to auto travel reflected in Exhibit N and
27 the \$215.00 taxi trip.

28 ⁶ The total of all fees approved on a final basis is \$1,011,650.12, and expenses approved
on a final basis is \$8,896.87, for a total of \$1,020,546.99.

Case Nos. 01-55472-JRG and 01-55473-JRG

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
CERTIFICATE OF MAILING

I, the undersigned, a regularly appointed and qualified Judicial Assistant in the office of the Bankruptcy Judges of the United States Bankruptcy Court for the Northern District of California, San Jose, California hereby certify:

That I, in the performance of my duties as such Judicial Assistant, served a copy of the Court's **ORDER ON PRICEWATERHOUSECOOPERS LLP'S THIRD THROUGH FINAL FEE APPLICATIONS** by depositing it in the United States Mail, First Class, postage prepaid, at San Jose, California on the date shown below, in a sealed envelope addressed as listed below.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____ at San Jose, California.

LISA OLSEN

John Wesolowski, Esq.
Office of the U.S. Trustee
280 S. First St., Rm. 268
San Jose, CA 95113

Eric A. Sagerman, Esq.
WINSTON & STRAWN
333 South Grand Ave., 38th Floor
Los Angeles, CA 90071-1543

CIBC WORLD MARKETS CORP.
Attn: Heather Barlow
425 Lexington Avenue
New York, NY 10017

Kevin P. Connelly, Esq.
CROSSROADS, LLC
Attn: Todd E. Doyle
9 Executive Circle, Suite 190
Irvine, CA 92614

Miles R. Stover
Estate Representative
3415 "A" Street N.W.
Gig Harbor, WA 98335

Seyfarth Shaw
815 Connecticut Ave., N.W.
Suite 500
Washington, DC 20006-4004

PRICEWATERHOUSECOOPERS LLP
Attn: Michelle S. Novotny
10 Almaden Blvd., Suite 1600
San Jose, CA 95113-2007

Lawrence T. Kane, Esq.
ORRICK, HERRINGTON, et al.
Old Federal Reserve Bldg.
400 Sansome Street
San Francisco, CA 94111-3143

Philip A. Gasteier, Esq.
ROBINSON, DIAMANT & WOLKOWITZ
1888 Century Park East, Suite 1500
Los Angeles, CA 90067

Sara Chenetz, Esq.
PIPER RUDNICK LLP
1999 Avenue of The stars, 4th Floor
Los Angeles, CA 90067-6022`